

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERIBERTO RODRIGUEZ,) Civil Action No. 2: 14-cv-0324
)
Plaintiff,) United States District Judge
)
v.) Arthur J. Schwab
)
JOHN E. WETZEL, et al.,) United States Magistrate Judge
) Cynthia Reed Eddy
Defendants.)

MEMORANDUM ORDER

This case was commenced on March 13, 2014, and was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court for Magistrate Judges.

Defendants filed a Partial Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), to which Plaintiff, Heriberto Rodriguez (“Rodriguez”), responded in opposition in a seven (7) page handwritten response [ECF No. 73] and a 100-page handwritten brief [ECF No. 74].

On February 3, 2015, Magistrate Judge Eddy filed a Report and Recommendation [ECF No. 81] recommending that Defendants’ partial motion to dismiss be granted in part and denied in part. Rodriguez was served with the Report and Recommendation at his listed address. The parties were advised that they had until February 20, 2015, to file written objections to the Report and Recommendation.

Rodriguez filed a timely motion for extension of time to file objections. [ECF No. 83.] The motion was granted and Rodriguez was granted leave until March 6, 2015, to file any objections. [Text Order of February 13, 2015.] To date, Rodriguez has neither filed any objections nor has he sought an additional extension of time in which do to so. Defendants,

likewise, have neither filed any objections nor have they sought an extension of time in which to do so.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 9th day of March, 2015:

1. Defendants' partial motion to dismiss is **GRANTED IN PART AND DENIED IN PART**. The only three claims remaining in this case are (1) Rodriguez's claim that Defendants Chesmer, Elk, Roberson, Phillipi, and Moran allowed and encouraged Inmate Cave to assault Rodriguez (Amended Complaint, at ¶¶ 29 - 34); (2) Rodriguez's claim that on August 24, 2013, he was assaulted by Defendants Peer, Chesmer, Barnard, and Elk with the food aperture causing an injury to his wrist by (Amended Complaint, at ¶ 144); and (iii) Rodriguez's claim that Defendants Peer, Chemser, Phillipi, Barnard, and Elk have filed false misconduct reports in retaliation for him filing grievances (Amended Complaint at ¶¶ 30, 35, 36, 120, 131).

2. **IT IS FURTHER ORDERED** that the following Defendants are dismissed: (i) Defendant Smith is voluntarily dismissed; (ii) Defendants Wetzel, Witherite, Varner, Capozza, Zaken, Woods, Scire, and Klosko are dismissed with prejudice for lack of personal involvement; and (iii) Defendants Farley, Nichols, Scott, Wetzel, Williams, Witherite, Varner, Capozza, Kirby, Scire, Zaken, Woods, Adams, Lamonaca, and Klocko are dismissed with prejudice for failure to state a retaliation claim.

2. **IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 81) dated February 2, 2015, is **ADOPTED** as the Opinion of the Court.

3. **IT IS FURTHER ORDERED** Defendants Chesmer, Elk, Roberson, Phillipi, and Moran shall file their Answer in accordance with Federal Rule of Civil Procedure 12(a)(4).

4. **IT IS FURTHER ORDERED** that this matter is remanded back to the magistrate judge for all further pretrial proceedings.

SO ORDERED this 9th day of March, 2015.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: HERIBERTO RODRIGUEZ
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